



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/821,041

04/08/2004

Colin T. Metcalfe

50180

9253

22929

7590

06/15/2007

SUE Z. SHAPER, P.C.
1800 WEST LOOP SOUTH
SUITE 1450
HOUSTON, TX 77027

EXAMINER

ARK, DARREN W

ART UNIT

PAPER NUMBER

3643

MAIL DATE

DELIVERY MODE

06/15/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/821,041	Applicant(s) METCALFE, COLIN T.	
	Examiner Darren W. Ark	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 23-36, 40, 41 and 43-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-30 is/are allowed.
- 6) ☒ Claim(s) 1, 3-7, 31-36, 40, 41, 43, 45 and 48 is/are rejected.
- 7) ☒ Claim(s) 2, 44, 46 and 47 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3-5, 7, 32-36, 45, 48 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Taylor 3,921,983.

Taylor discloses including in the particulate composition (16) at least one insect behavior modifying chemical (thermoplastic material can modify insect behavior by presenting insects with an obstacle; chemical not being particularly claimed) and at least one magnetized magnetic material (16 which may be constructed completely of ferromagnetic material or the like); a trap (18, 24).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6, 31, 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor 3,921,983 in view of Winnard 6,006,906 or Baermann 3,273,001.

Taylor discloses a ferromagnetic material, but does not disclose the magnetized magnetic material including strontium ferrite. Winnard and Baermann disclose magnetized magnetic material including strontium ferrite (Winnard discloses that strontium ferrite is useful due to its good resistance to demagnetization and its low cost and Baermann discloses that iron ferrites with a metallic oxide of strontium are especially adapted for use as the finely divided, permanent magnet materials). It would have been obvious to one of ordinary skill in the art to modify the magnetized magnetic material of Taylor such that it is strontium ferrite in view of Winnard or Baermann in order to provide magnetized magnetic material which has good resistance to demagnetization and has low cost.

5. Claims 41, 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor 3,921,983.

In regard to claim 41, Taylor does not disclose the soft magnetic material including ferrosilicate. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize a ferrosilicate, since it has been held to be

Art Unit: 3643

within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of design choice, and because ferromagnetic silicates are materials exhibiting magnetic properties and would be employed by a person of ordinary skill in the art depending upon the ultimately desired composition. *In re Leshin*, 125 USPQ 416.

In regard to claim 43, Taylor does not disclose the ratio of hard material to soft material being approximately 1 to 9, by weight. It would have been an obvious matter of design choice to modify the composition of Taylor such that the ratio of hard material to soft material being approximately 1 to 9 by weight, since applicant has not disclosed that by doing so produces any unexpected results and because a person of ordinary skill in the art would readily alter the composition in order to obtain the desired product consistency and characteristics.

Allowable Subject Matter

6. Claims 2, 2/3, 5/2, 6/5/2, 44, 46, and 47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 23-30 are allowed.

Art Unit: 3643

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (571) 272-6885. The examiner can normally be reached on M-F, 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Darren W. Ark
Primary Examiner
Art Unit 3643

DWA